

Issue #1

When would an employer have to do something under this rule?

Options for Discussion

This matrix provides options and information to facilitate a discussion of the question: **When would an employer have to do something under this rule?** This was one of the key issues raised during the rule-development conferences L&I held in seven Washington cities last October and in comments the department received after the conferences.

The matrix describes five major categories of options:

- mandatory for all employers
- injury based (with a number of variations)
- risk-factor based (two variations)
- request/report/complaint-initiated
- combination (one example given, combining injury-based and risk factor-based options)

Space is also provided at the end of the matrix to add other options.

It is important to note that different requirements or elements of a rule (such things as training, identifying hazardous jobs, providing controls for hazards) could have different options for what initiates a required action. For example, the proposed North Carolina ergonomics rule (1/5/99) requires all employers to provide training; however, providing controls for hazards results from employee reports of “ergo symptoms”.

Please read through the matrix carefully and come to the meeting with additional options, combinations of options, strengths and limitations, as well as your comments or questions.

Please keep in mind as well that the six major issues we will be discussing over the next several meetings are significantly inter-related. We need to recognize this and try to work through this first issue as best we can, then come back to it periodically, as needed, when we discuss the other issues.

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CATEGORY 1: APPLIES TO ALL EMPLOYERS

Option and Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
1.1 Mandatory for all employers. All employers would be subject to some or all provisions of the rule.	Very clear to employers when the rule (or requirement of the rule) applies to them. Other:	Employers without hazards or injuries may have to make efforts and spend resources to meet the rule's requirements. Other:	North Carolina Proposal (1/5/99): All employers are required to comply with the specified training requirements. British Columbia's Ergonomics Rule: All employers must identify factors in the workplace that may expose workers to a risk of musculoskeletal injury.

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CATEGORY 2: INJURY BASED			
	Strengths of the Category	Limitations of the Category	
	<p>Employers could focus their efforts and resources on those jobs with known MSDs.</p> <p>Other:</p>	<p>Requires an employee to be injured before action is taken – reactive rather than preventative.</p> <p>The Washington Industrial Safety & Health Act (WISHA) and existing WISHA rules require a preventative approach rather than a reaction to injuries.</p> <p>What constitutes a MSD becomes the focus rather than finding and fixing hazardous jobs.</p> <p>May foster under-reporting of workplace injuries and illnesses.</p> <p>Intensifies debate on whether a particular MSD is predominantly work-related, or if some non-work related factor(s) may be contributing to the injuries.</p> <p>Other:</p>	
Option/Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
<p>2.1</p> <p>MSD in the workplace.</p> <p>If an employee suffers an MSD, then the employer would be required to comply with the rule.</p>	<p>Strength of the category applies. AND</p> <p>Recognizes other employees in the workplace may be at risk.</p> <p>Promotes awareness of MSDs for all employees.</p> <p>Other:</p>	<p>Limitations of the category apply.</p> <p>Other:</p>	

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CATEGORY 2: INJURY BASED (continued)

Option/Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
<p>2.2 MSD in a specific job.</p> <p>If an employee in Job X suffers an MSD, then the rule would be required for all of the employer's Job X positions.</p>	<p>Strength of the category applies. AND</p> <p>L&I outreach and inspection resources could focus on the specific jobs where MSDs occur.</p> <p>Other:</p>	<p>Limitations of the category apply. AND</p> <p>Does not recognize that similar jobs may have similar exposures, or that other jobs (such as earlier steps in an assembly process) may impact the job where the MSD occurred.</p> <p>Other:</p>	<p>California's Ergonomic Standard: Employers must develop a program to minimize repetitive motion injuries (RMIs) in a job or work activity when more than one physician-diagnosed, work-related RMI occurs in an identical work activity within a 12-month period.</p>
<p>2.3 MSD incidence rate exceeds average for all industries in Washington state.</p> <p>For example, if an employer has an incidence rate of 5.2 MSDs per 100 full-time workers, during the same period that the statewide average MSD incidence rate is 3.5, then the employer would be required to comply with the rule.</p>	<p>Strength of the category applies. AND</p> <p>Recognizes that employers may not be able to prevent all work-related MSDs.</p> <p>L&I outreach and inspection resources could focus on the higher-risk employers.</p> <p>Other:</p>	<p>Limitations of the category apply. AND</p> <p>An employer's MSD incidence rate could move up or down each year, changing whether he/she must comply with the rule.</p> <p>Employers with average or below average MSD incidence rates would not be required to correct hazards.</p> <p>Small employers would be at a disadvantage because one or two MSDs could place them above the statewide average.</p> <p>Other:</p>	

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CATEGORY 2: INJURY-BASED (continued)

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<p>2.4 MSD incidence rate exceeds average for specific industry in Washington state.</p> <p>For example, if Employer A in Industry X has an MSD incidence rate of 15.6 per 100 full-time workers, during the same period that the state-wide average MSD incidence rate in Industry X is 13.0, then Employer A would be required to comply with the rule.</p>	<p>Strength of the category applies. AND</p> <p>Recognizes that a number of industries have higher risks for MSDs than others.</p> <p>Recognizes that employers may not be able to prevent all work-related MSDs.</p> <p>L&I outreach and inspection resources could focus on the highest-risk employers in specific industries.</p> <p>Other:</p>	<p>Limitations of the category apply. AND</p> <p>An employer's MSD incidence rate could move up or down each year, changing whether he/she must comply with the rule.</p> <p>Employers with average or below average incidence rates would not be required to correct hazards.</p> <p>Small employers would be at a disadvantage because one or two MSDs could place them above the statewide average.</p> <p>Other:</p>	
<p>2.5 Selected high risk industries.</p> <p>Employers in industries identified as high risk would be required to comply with the rule.</p>	<p>Strength of the category applies. AND</p> <p>Requiring an entire industry to comply with the rule could encourage industry-wide solutions and sharing of best practices.</p> <p>Non-high-risk industries that voluntarily address hazards could avoid becoming high-risk industries.</p> <p>L&I outreach and inspection resources could focus on the selected high risk industries.</p> <p>Simplifies tracking of rule effectiveness.</p> <p>Other:</p>	<p>Industries with MSDs would not have to fix high-risk jobs unless they were high-risk industries.</p> <p>MSDs in low-risk industries would not be addressed at all.</p> <p>Industries identified as high risk could change each year (depending on selection criteria), leading to questions about continued compliance.</p> <p>Assuming selection of high risk industries is based predominantly on MSD claims data, the limitations of the injury-based category would apply.</p> <p>Other:</p>	<p>OSHA's Ergonomics Program Management Guidelines for Meatpacking Plants: These guidelines recommend that all employers in SIC code 2011, red meat packing, implement a comprehensive ergonomics program.</p>

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<p>2.6 MSD in high risk industry.</p> <p>If an employee in an industry that is identified as high risk suffers an MSD, his/her employer would be required to comply with the rule.</p>	<p>Strength of the category applies. AND</p> <p>Recognizes that some employers in high-risk industries may already have in place effective programs to prevent MSDs.</p> <p>L&I outreach and inspection resources could focus on the selected high-risk industries where MSDs are occurring.</p> <p>Other:</p>	<p>Limitations of the category apply. AND</p> <p>Industries with MSDs would not have to fix high-risk jobs unless they were high-risk industries.</p> <p>MSDs in low-risk industries would not be addressed at all.</p> <p>Other:</p>	
<p>2.7 High-risk occupations.</p> <p>Employers with employees in occupations identified as high risk would be required to comply with the rule.</p>	<p>Strength of the category applies. AND</p> <p>High-risk occupations get fixed regardless of the industry in which they occur.</p> <p>L&I outreach and inspection resources could focus on the high risk occupations.</p> <p>Other:</p>	<p>Changes in occupations (for example, new technology or work organization) could affect designation of high-risk occupations.</p> <p>Difficulties arise when deciding how to define occupation.</p> <p>Inadequate statewide data to identify which occupations are the riskiest.</p> <p>The same occupation could have no exposure to risk factors in one workplace and high exposure in a different workplace, yet both employers would have to comply.</p> <p>Assuming selection of high-risk occupations is based predominantly on MSD claims data, the limitations of the injury-based category would apply.</p> <p>Other:</p>	<p>Maine Title 26, Chapter 5, Subchapter IIA, "Video Display Terminal Operators" requires employers to provide training if they have two or more operators who work at VDTs for more than four hours a day.</p>

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CATEGORY 3: RISK-FACTOR BASED			
	Strengths of the Category	Limitations of the Category	
	<p>Preventative approach – implementation not based on stated injuries or injury data.</p> <p>Consistent with preventative approach of existing WISHA rules.</p> <p>Analysis of risk factors can lead to other process improvements and benefits besides injury prevention.</p> <p>Employers not held responsible for factors outside of the workplace that can cause MSDs.</p> <p>Other:</p>	<p>Employers may spend time and effort evaluating and correcting risk factors for tasks or jobs that haven't had any associated MSDs.</p> <p>Other:</p>	
Options/Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
<p>3.1 Selected high-risk tasks.</p> <p>Employers with employees performing tasks identified as high risk would be required to comply with the rule (e.g., manual lifting over a set weight limit).</p>	<p>Strengths of the category apply. AND</p> <p>Would provide incentives for market to make changes in products (e.g., smaller, lighter containers).</p> <p>Focus on specific high-risk tasks makes identifying solutions easier.</p> <p>High-risk tasks get fixed regardless of the job or industry in which they occur.</p> <p>L&I outreach and inspection resources could focus on the selected high-risk tasks.</p> <p>Other:</p>	<p>Limitation of the category applies. AND</p> <p>Difficult to set thresholds for high-risk tasks. They may be either too high when trying to ensure that a hazard exists under all conditions, or too low when trying to ensure that employees are protected under all conditions.</p> <p>If, for example, lifting is considered a high-risk task, setting a maximum weight limit does not take into account other components of lifting that may make a lighter load hazardous. Also, the maximum weight limit may not take into account other factors that could make this load OK under certain circumstances.</p> <p>Other:</p>	<p>Denmark's legislation on heavy lifting sets absolute limits of 50 kg. (110 lbs.) for lifts close to the body, 30 kg. (66 lbs.) for lifts 12" from the body and 15 kg. (33 lbs.) for lifts 18" from the body. In addition, weights as low as 3 kg. (6.6 lbs.) would have to be evaluated for aggravating factors.</p> <p>Great Britain Manual Handling Operations Regulation (1992) requires employers to analyze jobs in which manual handling of loads by human effort occurs and address any hazards found.</p>

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CATEGORY 3: RISK-FACTOR BASED (continued)			
Option and Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
<p>3.2 Exposure to specific risk factors in the workplace. (Sufficient duration, frequency, intensity, or combination of risk factors would need to be determined.)</p> <p>Employers with employees exposed to specific risk factors would be required to comply with the rule.</p>	<p>Strengths of the category apply. AND</p> <p>Focuses on risk factors that have been associated with injuries and could address them in any job or industry where they occur.</p> <p>Focuses on identifying and controlling hazards, not on defining MSD.</p> <p>Other:</p>	<p>Limitation of the category applies. AND</p> <p>Difficult to set thresholds for risk factors. Some question the extent or quality of scientific data to support risk factor thresholds.</p> <p>Unless risk factors are clearly defined, employer obligations may not be clear (e.g. where to start or stop).</p> <p>Employers may spend time and effort on fixing jobs that haven't had any associated MSDs in their business.</p> <p>Other:</p>	<p>British Columbia's Ergonomics Rule: When risk factors are identified, an employer must take steps to eliminate or minimize risk to employees, and provide them with training.</p> <p>Sweden's Ergonomics for the Prevention of MSDs – Employer required to take action if employees perform awkward work postures and movement; exertion of force when working with an object, equipment, controls, materials; or transfer of persons, or physically monotonous, repetitive, closely controlled, or restricted work.</p> <p>Australia's National Standard for Manual Handling – If manual handling is performed the employer must examine and assess for health and safety.</p>

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CATEGORY 4: REQUEST/REPORT/COMPLAINT RESPONSE			
Option and Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
<p>4.1 Request/report/complaint response.</p> <p>If an employee or safety committee reports an MSD, symptoms of an MSD, or risk factors, the employer would be required to comply with the rule.</p>	<p>Ensures employee involvement.</p> <p>Hazards that need to be fixed are identified by those most familiar with the job.</p> <p>Other:</p>	<p>Employees may not request fixes for jobs because they are unaware of solutions.</p> <p>In some cases, requests/reports/complaints could be generated from issues unrelated to actual hazards, or be difficult and time consuming to document and respond to.</p> <p>For requests/reports/complaints associated with MSDs or symptoms of MSDs the limitations of the injury-based category would apply.</p> <p>Other:</p>	<p>North Carolina Proposed Rule (1/5/99): Engineering, Work Practice, or Administrative controls are required in response to employee reports of “ergo symptoms” (if symptoms judged work-related).</p>

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CATEGORY 5: COMBINATIONS

Option and Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples
<p>5.1 MSD or exposure to specific risk factors in the workplace. (Sufficient duration, frequency, intensity, or combination of risk factors would need to be determined.)</p> <p>If an employee suffers an MSD or specific risk factors are present in the workplace, the employer would be required to comply with the rule.</p>	<p>Preventative approach – implementation not solely based on stated injuries or injury data.</p> <p>Consistent with preventative approach of existing WISHA rules.</p> <p>Including occurrence of MSDs in this option recognizes that new risk factors may be associated with injuries.</p> <p>Analysis of risk factors provides opportunities for other process improvements and additional benefits besides injury prevention.</p> <p>Other:</p>	<p>Limitations of the injury-based category apply. AND</p> <p>Would need to identify what an employer's obligation would be if there are MSDs but no obvious risk factors.</p> <p>Difficult to set thresholds for risk factors. Some question the extent or quality of scientific data to support risk factor thresholds.</p> <p>Unless risk factors are clearly defined, employer obligations may not be clear (e.g. where to start or stop).</p> <p>Employers may spend time and effort fixing jobs that haven't had any associated MSDs in their business.</p> <p>Other:</p>	<p>The May 1995 OSHA proposed rule: Employers with significant risk factors or MSDs would have to evaluate jobs.</p>

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CATEGORY 6: OTHER OPTIONS			
Option and Description	Strengths of the Option	Limitations of the Option	Existing Ergonomics Standards, Proposals, or Guidelines as Examples